Small Entity Compliance Guide

American Samoa Longline Limited Entry Program

Revised August 3, 2006¹

This compliance guide is issued in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996.

This compliance guide is intended to explain the actions small entities must take to comply with the regulations governing the application requirements for American Samoa longline limited entry permits. For the complete set of official regulations, see Title 50, Part 665, of the Code of Federal Regulations. Regulations are subject to change, so this summary may become out of date. Any discrepancy between the contents of this guide and regulations in the *Federal Register* or Code of Federal Regulations will be resolved in favor of the regulations published in the *Federal Register* or Code of Federal Regulations.

Introduction

The American Samoa Longline Limited Entry Program was established under Amendment 11 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region. The final regulations implementing the program were published in the *Federal Register*, May 24, 2005 (70 FR 29646) and can be found in the Code of Federal Regulations, Title 50, Part 665 (formerly Part 660). Starting December 1, 2005, you are required to have an American Samoa longline permit (American Samoa longline limited entry permit) on board your vessel to use longline gear to catch pelagic fish (Pacific pelagic management unit species list at end of guide) in the Exclusive Economic Zone (EEZ, federal waters) around American Samoa. You will also need the permit to land pelagic fish in American Samoa caught with longline gear in the EEZ around American Samoa, or to transship pelagic fish caught by longline gear in the EEZ around American Samoa or on the high seas. You must have a valid permit on board your vessel to fish using longline in the EEZ around American Samoa. The EEZ is the area from 3 nautical miles from shore out to 200 nautical miles from shore or where it meets with EEZs of neighboring countries (please see the map at the end of the guide).

With a valid American Samoa longline permit, you can fish using longline gear, or land or transship fish caught using longline gear, inside the EEZs around Guam, Northern Mariana Islands, and the Pacific remote island areas. In other words, it substitutes for a Western Pacific Longline General Permit for those areas. The American Samoa longline permit may <u>not</u> be used in the Hawaii longline limited entry fishery.

¹ This is the third version of the compliance guide, containing information on the limited entry program requirements applicable of this date and relevant to the initiation of the permit upgrade phase. Obsolete information was removed or edited.

The National Marine Fisheries Service Pacific Islands Regional Office (PIRO) will process permit applications and issue the permits.

PIRO will issue American Samoa longline permits in three phases.

- 1) <u>Initial Permit Issuance</u>: The initial permits were issued in four vessel size classes, based on the size of the qualifying vessel, to persons who met the initial issuance qualifications and who applied on or before November 29, 2005 (120 days from the August 1, 2005 start date). The maximum number of permits in the limited entry permit program is the total number of permit applications received before November 30, 2005 and subsequently approved and issued by PIRO. The application period for initial permits is closed.
- 2) <u>Permit Upgrades</u>: After all of the initial permits are issued, 26 permit upgrades will be made available to permit holders in the smallest vessel size class (Class A). PIRO will publish a *Federal Register* notice, among other means, that upgrades are available. The upgrades will be issued on a fixed schedule over the next four years, in the larger three vessel size classes (Classes B-1, C-1, and D-1) to those who hold permits in Class A. Those who upgrade their permits will have to give up their original Class A permits and cannot transfer their upgrade permits for three years.
- 3) Additional Permit Issuance: If the number of permits falls below the maximum allowed under the limited entry permit program in any vessel size class, PIRO will publish a *Federal Register* notice, among other means, that additional permits are available.

How to Apply for a Permit, Transfer or Upgrade

- Obtain an American Samoa longline limited entry permit application from PIRO, the Pacific Islands Region (PIR) American Samoa Field Office, or from the PIR website. (see Contact Information)
- You need to submit a complete permit application to PIR which must include:
 - o A completed, signed and dated application on a form provided by PIR.
 - A copy of the U.S. Coast Guard Certificate of Documentation, Govt. of American Samoa vessel registration, or ownership title of the vessel, if you are registering a vessel to the permit.
 - o If you are the only (sole) owner of the vessel to be registered to the permit, you do not need to complete the Supplementary Information sheet. However, if you have partners, the owner is a business, or you do not own the vessel, you must complete and submit the Supplementary Information sheet listing all owners, partners, and corporate officers.
 - O Copies of dated logbook sheets, receipts, invoices, creel surveys or other records showing landings of pelagic fish in American Samoa, caught by longline gear or any participation in the American Samoa pelagic longline fishery. Note: the earliest dated documentation will be used in determining the priority given to applicants within each vessel size class for additional permits and permit upgrades.

- o PIR can assist with retrieving certain kinds of government records if you do not have a copy. See A4 in the Question and Answer section.
- o A check or money order for the non-refundable application processing fee of \$35, made out to *Department of Commerce*, *NOAA*. Cash cannot be accepted. The fee applies to transfer, upgrade, or renewal of a permit.
- Mail the complete permit application, including payment, to PIRO at the address in the Contact Information section.
- You will be notified if your application package is incomplete, so that you can provide any missing pieces.
- PIRO has 30 days to review your application and respond whether you qualify for an American Samoa longline limited entry permit, transfer or upgrade. You may appeal to the Pacific Islands Regional Administrator in writing if you feel that the determination was wrong.

Vessel Size Classes

American Samoa longline permits are categorized into four vessel size classes, based on the size of the qualifying vessel:

- Class A: vessel length overall less than or equal to 40 feet (12.2 meters)
- Class B (and B-1): over 40 ft (12.2 m) to 50 ft (15.2 m)
- Class C (and C-1): over 50 ft (15.2 m) to 70 ft (21.3 m)
- Class D (and D-1): over 70 ft (21.3 m)

Permits are valid only for the vessel size class under which they were issued, or smaller. In other words, you cannot register a Class B, C, or D size vessel to a Class A permit, but you can register a Class D or smaller size class vessel to a Class D permit.

The standard measurement for vessel length is length overall, i.e., the length of the hull measured, parallel to the waterline, from the tip of the bow to the end of the stern, not including projecting parts like bowsprits, rudders, outboard motor brackets, or other accessories. PIRO uses the vessel length documented in the USCG Certificate of Documentation or American Samoa vessel registration.

Maximum Number of Limited Entry Permits

The maximum number of American Samoa longline permits is the total number of permits that were issued under the initial issuance conditions. That is, the applications must have been received by PIRO by the end of the 120 day initial issuance period (ended November 29, 2005), were complete, met the qualifying criteria, and were approved by the Pacific Islands Regional Administrator (50 CFR 665.36(f)(5)). The maximum number of permits in each vessel size class was set by the number of initial permits issued within each vessel size class.

The maximum number of limited entry permits is 60 permits, current as of *July 18*, 2006. The class size limits are 22 permits in Class A, 5 in Class B, 12 in Class C and 21 in Class D^2 .

Permit Upgrades

To enable those with the smallest vessels (Class A, length up to 40 ft) to move up to larger vessels, PIRO will issue 26 permit upgrades over the next four years as discussed below. Applicants for permit upgrades must be Class A permit holders and have participated in the American Samoa pelagic longline fishery before March 22, 2002. Within each vessel size class, PIRO will give priority to those applicants with the earliest documented participation in the American Samoa longline fishery.

- Takes place after Initial Permit Issuance.
- PIRO will publish a *Federal Register* notice, among other means, to notify prospective applicants of the availability of permit upgrades. (*Federal Register* notice published July 28, 2006 (71 FR 42814) for availability of 2006 permit upgrades.)
- If you receive a permit upgrade, you cannot transfer your permit for three years from date of issuance and must give up your Class A permit.
- The upgrades will be distributed according to the following four-year schedule:

Vessel Size Class	Year 2006	2007	2008	2009	Total
B-1 (40.1' – 50')	4	4	4	2	14
C-1 (50.1' – 70')	2	2	2	0	6
D-1 (70' or larger)	2	2	2	0	6

- For all three upgrade classes, PIRO may reissue upgrade permits that were given up, not issued, or revoked.
- If you receive an upgrade, you will have 120 days to register a vessel of the same size class as the upgrade, or smaller, to the permit. If you do not meet this requirement, your permit may be invalidated and reissued to another qualified person.
- Documented participation means either 1) proof of ownership of a vessel used for longline fishing, or 2) evidence of work on a longline fishing trip within the EEZ around American Samoa. The proof can take various forms including vessel ownership or registration documents, receipts or invoices, tax records, pay records, logbooks, creel survey forms, and so forth. The documentation must be dated to determine priority ranking of applicants.

Additional Permit Issuance

• If the number of permits issued in Classes A, B, C or D falls below the maximum number of permits issued during initial permit issuance, PIRO will publish a *Federal Register* notice, among other means, to notify prospective applicants that permits will be available.

² The permit limit for Class D may increase by 1 permit, pending results of a permit appeal.

• PIRO will issue available permits to qualified applicants with the earliest documented participation in the fishery on a Class A, B, C, and D vessel, in that order. If there is a tie, the applicant with the earliest history of documented participation will be selected.

American Samoa Longline Permit Evaluation and Requirements

- PIRO will determine, within 30 days of receiving a complete application, whether you qualify for a permit and will notify you with a dated letter.
- You have 120 days to register a vessel, of a size appropriate to the class of permit you hold, starting on the date you are notified (by the letter) that your permit was approved. You must submit a copy of the current U. S. Coast Guard Certification of Documentation or American Samoa vessel registration, and a Supplementary Information sheet listing the names and addresses of all owners of the vessel, to PIRO to register the vessel.
- You may appeal to the Pacific Islands Regional Administrator if you are denied a permit or a transfer, if you dispute conditions on a permit, or if your permit is suspended (50 CFR 665.21(n)). You must submit an appeal in writing to the Regional Administrator within 30 days of the action, state the action that you are appealing, and provide reasons for the appeal. You may request an informal hearing on the appeal.
- Individuals are not allowed to own more than 10 percent of the available permits (in all classes). Any partial ownership in a permit is counted as a whole permit.
- You must notify PIRO of any changes in information on your permit application, vessel documentation or registration within 30 days of the change. Not informing PIRO of changes may result in delays in processing of a permit or missing important notifications because they could not make contact with you, or other penalties that could include loss of the permit, or a citation for a violation because the permit would become invalid if it would not have the correct vessel name or permit holder.

Permit Transfers

- You may transfer a Class A vessel permit to: 1) a family member (by relation or adoption) of the permit holder or 2) a Western Pacific community located in American Samoa (50 CFR 665.36(i)(2)), or 3) any person with documented participation in the American Samoa EEZ pelagic longline fishery on a Class A vessel prior to March 22, 2002.
- You may transfer a Class B, C, and D vessel class permit to: 1) a Western Pacific community located in American Samoa or 2) any person with documented participation in the American Samoa longline fishery, regardless of date.
- You may <u>not</u> transfer a Class B-1, C-1, and D-1 upgrade permit for three years from date of issuance, except by bequeathing it via a will or leaving it to a family member if you die during the three years. After the three years, you may transfer the upgrade permits like a regular Class B, C, or D permit.
- You may temporarily transfer your permit (except upgrades in the first three years) to another qualified person (lease). The same requirements for applying and qualifying for a permit transfer (sale, bequest, gift, etc.) apply to a lease. PIRO treats leases as transfers

- and does not become involved in lease agreements. The lease agreement and any related business arrangements are the responsibility of the leasing parties.
- Please check the appropriate transfer type box on the application form and provide documentation to support the transfer, so that PIRO can evaluate your application for transfer.

Permit Renewal

Permits expire three years after issuance. You may renew your permit if you meet the following conditions:

- If your vessel is in Class A or B, you are required to show that you have landed a total of at least 1,000 lb (455kg) of pelagic fish over three consecutive calendar years, beginning with the date of permit issuance.
- If your vessel is in Class C or D, you are required to show that you have landed a total of at least 5,000 lb (2,273 kg) of pelagic fish over three consecutive calendar years, beginning with the date of permit issuance.
- Landing requirements for renewal of upgrade Classes B-1, C-1 and D-1 were inadvertently omitted from the regulation. This omission may be corrected in the future, so it would be advisable for upgrade permit holders to be aware of this requirement.

Logbook Reporting Requirement

If you are the operator of a vessel registered to an American Samoa longline permit, you must complete a Western Pacific Daily Longline Fishing Logbook form for each longline set. The logsheets must be submitted to NMFS within 72 hours of the end of the fishing trip. Instructions are provided with the logbook. Issuing and receiving of the logbooks is handled by the PIR American Samoa Field Office located with the American Samoa Department of Marine and Wildlife Resources office in Fagatogo, Tutuila. This is the same logbook requirement as for the Hawaii longline limited entry permit or the Western Pacific longline general permit previously required by participants in the American Samoa longline fishery.

If you operate as a receiving vessel, you are required to submit the NMFS Transshipment Log Report for Pelagic Management Unit Species to NMFS within 72 hours of the end of the trip. Issuing and receiving of the transshipment logs is handled by the PIR American Samoa Field Office.

VMS and Observer Requirements

- If your vessel is greater than 40 ft (12.2 m) long, that is, in Class B, B-1, C, C-1, D, or D-1, you must carry a NMFS observer, if requested by NMFS.
- If your vessel is over 40 ft (12.2 m) long, you must notify NMFS at least 72 hours before leaving on a trip so NMFS can determine if an observer will be placed on the vessel. The contact phone number for the NMFS American Samoa Observer Program is (684) 731-2478. You may leave a message and someone will respond.

• If your vessel is at least 50 ft (15.2 m) long (Class C, C-1, D or D-1), you must carry an active vessel monitoring system (VMS) unit installed by NMFS. VMS uses a satellite to transmit vessel identification and position to NMFS for monitoring vessel location and activity. The requirement goes into effect when the NMFS Enforcement Special Agent in Charge notifies you that a VMS will be installed on the vessel.

Related Regulations

- The Large Vessel Prohibited Areas regulation (50 CFR 665.37) prohibits vessels over 50 feet long from fishing for pelagic fish in specific areas around Tutuila, Manu'a Islands, Rose Atoll, and Swains Island. The compliance guide for this regulation, Regulations for Large Vessel Closed Areas in Nearshore Waters Around American Samoa, Revised March 15, 2002, explains the regulation and can be found at: http://swr.nmfs.noaa.gov/pir/guides.htm. Copies of the regulation or the compliance guide can be obtained upon request to PIRO (see address in Contact Information).
- New sea turtle mitigation regulations were published in the *Federal Register* on November 15, 2005 (70 FR 69282) and became effective December 15, 2005. As a vessel owner or operator, you are required to complete a NMFS Protected Species Workshop every year. The vessel operator must have a valid Protected Species Workshop certificate issued by NMFS, or a legible copy of it, in their name on board the vessel when fishing (50 CFR 665.34). You are also required to carry and use specific equipment for handling and releasing turtles and to follow specific procedures if you entangle or hook a sea turtle (50 CFR 665.32). Please refer to the *Guidelines for Handling Hooked Sea Turtles* that will be provided at the Protected Species Workshop, from the PIR website http://swr.nmfs.noaa.gov/pir/index.htm or by request to PIRO. A separate compliance guide for the new regulation is available from the PIR website at http://swr.nmfs.noaa.gov/pir/guides.htm.

Questions and Answers

Q1: What are the new regulations?

A1: Vessels that are fishing for open-ocean pelagic fish (tunas, wahoo or paala, mahimahi or masimasi, marlins, etc.; see list at end of guide) using longline gear in the EEZ around American Samoa, or land or transship fish caught with longline gear in the EEZ around American Samoa, must have a American Samoa longline permit on board the vessel. Other requirements, including observers, vessel monitoring system, and handling of sea turtles, also take effect with the new regulation.

Q2: Who is affected by the new regulations?

A2: Anyone who operates or owns a boat that fishes with longline gear in the EEZ around American Samoa. The EEZ covers all domestic (federal) waters around American Samoa that are outside the outer boundaries of the Territory of American Samoa. The outer boundaries of American Samoa are lines in the ocean 3 nautical miles off the coasts of Tutuila, Aunu'u, the Manu'a Islands, and Swains Island. The EEZ waters extend from that line seaward to the outer EEZ boundaries of Tonga, Samoa, Tokelau, the Cook Islands, and Niue. (See the map at end of this Guide).

Q3: Why do we have these regulations?

A3: The limited entry program is intended to: 1) avoid a "boom and bust" cycle of fishery development that could disrupt community participation in the American Samoa small-scale pelagic longline fishery; 2) provide a framework to adjust regulations for the American Samoa longline fishery; 3) reduce the potential for fishing gear conflict in waters around American Samoa; 4) maintain the local catch rates of albacore at economically viable levels; and 5) provide an opportunity for indigenous islanders to participate in the large vessel sector of the fishery. To achieve these goals, the Western Pacific Fishery Management Council developed a limited entry permit program for the American Samoa longline fishery based on four vessel size classes which provides opportunities for American Samoa fishermen to participate in the fishery. NMFS implemented the program by publishing a final rule in the *Federal Register* establishing the regulations (70 FR 29646).

Q4: What kind of documentation is required to qualify for a permit upgrade or an additional permit?

A4: You must provide copies of dated records that show that you participated in the American Samoa pelagic longline fishery. The date on the record is important because the earliest date of historic documented participation will be used to determine the priority given to applicants, within each size class, for issuance of upgrades or additional permits. The records can include, but are not limited to, 1) documented or registered ownership, or bill of sale, of a fishing vessel that fished with longline gear around American Samoa for pelagic species, and 2) logbooks, receipts of sales of fish, invoices, creel or survey records, or other government records. The records must show evidence of pelagic longline fishing activity, or landings of longline caught pelagic fish, around American Samoa.

If you know of creel census surveys or other government records that would document your participation and you do not have copies of these, you may request PIRO in writing to retrieve the records for you. Please provide PIRO with as much specific information as possible on the type of record, estimated dates, vessel name, and owner or captain's name so that retrieval of the records will be possible. There is no guarantee that PIRO can retrieve the requested government records, so please supply as much of your own documentation as possible to help with the evaluation of your qualifications.

Q5: What do you mean by "documented participation?"

A5: Documented Participation is defined as either 1) documented ownership of a longline fishing vessel, or 2) evidence of work on a longline fishing trip. It has specific meaning with regard to proving your qualification for a permit under Permit Upgrades, Additional Permit Issuance or Permit Transfer.

Q6: Are there any exceptions to the regulations?

A6: Vessels fishing with longline gear outside the EEZ around American Samoa, or inside another country's EEZ, do not need an American Samoa longline permit to land or transship pelagic fish inside of the outer boundary of the EEZ around American Samoa. For example, a domestic longliner not registered with an American Samoa longline permit, or a foreign longliner, may unload pelagic fish in Pago Pago that were caught outside the EEZ around

American Samoa. However, it is illegal for these vessels to fish or transship fish inside the EEZ around American Samoa.

Q7: When did these regulations take effect and for how long are they effective?

A7: The permit requirement went into effect December 1, 2005, and will remain effective until they are revised or removed by NMFS, following the fishery management plan amendment process through the Western Pacific Fishery Management Council.

Q8: What are the penalties for a longline vessel that fishes in the American Samoa EEZ without a limited entry permit after December 1, 2005?

A8: Penalties are determined on a case-by-case basis; they may include significant civil penalties and permit sanctions. The Western Pacific Pelagic Fishery Penalty Schedule can be found at: http://www.gc.noaa.gov/enforce-office3.html.

Q9: Mail to and from American Samoa is sometimes delayed. How can I meet the deadlines if the mail is delayed beyond my control?

A9: PIRO intends to help American Samoan applicants cope with mail delays by doing the following:

- For time-sensitive mass mailings of application packets, notifications or solicitations, PIRO will send mailings by the fastest feasible means.
- For time-sensitive individual notifications or solicitations, PIRO will deliver mail to American Samoa with delivery confirmation. The required response period will begin when delivery is confirmed.
- The required response period for PIRO will begin when the application or notification is received by PIRO in Honolulu.

It is very important that you supply a complete and accurate mailing address, phone number, and a fax number, if available, to make sure that important mail and notifications are delivered to you. Please notify PIRO if there are any changes to the mailing address or phone numbers, or any information on the application form, as soon as possible.

Q10: If I get a permit upgrade and then decide that I want to go back to a Class A permit, can I get back my Class A permit back?

A10: You cannot get your old Class A permit back because it will be removed from the group of available Class A permits when you upgrade. You may obtain a Class A permit if one is vacated or revoked and becomes available for reissue, or you may obtain one by a transfer (see previous section on Permit Transfers).

Q11: What is the Protected Species Workshop and am I required to attend it?

A11: The Protected Species Workshop provides essential information on proper procedures to handle, resuscitate, or release protected species, such as turtles, seabirds and whales, to owners and operators of longline fishing vessels. American Samoa longline permit vessel owners and operators must attend the workshop every year and the operator must have a valid Protected Species Workshop certificate on board the vessel when fishing. Please contact the PIR American Samoa Field Office at (684) 633-5598 in American Samoa, or Georgia Matsukawa at (808) 944-2201 in Honolulu, for information on the workshop schedule.

Q12: Do I need the American Samoa longline limited entry permit to receive pelagic fish from other vessels offloading or transshipping fish?

A12: No. You are required to have a Western Pacific receiving vessel permit, which you can obtain from PIRO. You are not allowed to fish using longline gear and must stow or remove any longline fishing gear from your vessel when it is operating as a receiving vessel. You are required to submit the NMFS Transshipment Log Report for Pelagic Management Unit Species to the PIR American Samoa Field Office within 72 hours of the end of the trip.

Q13: Who can I contact for additional copies of this guide or for more information on the regulations?

A13: Please call the Pacific Islands Regional Office in Honolulu or the PIR American Samoa Field Office. See the following section for contact information.

Contact Information

Obtain a permit application from:

- Pacific Islands Region (808) 944-2200, or FAX (808) 973-2741 (address below)
- PIR American Samoa Field Office: (684) 633-5598 (located with the American Samoa Department of Marine and Wildlife Resources in Fagatogo, Tutuila, American Samoa)
- PIR website: http://swr.nmfs.noaa.gov/pir

Submit your application to the NMFS Pacific Islands Regional Office (PIRO):

NMFS Pacific Islands Region ATTN: Permits 1601 Kapiolani Blvd., Suite 1110 Honolulu, HI 96814-4700

To notify NMFS 72 hours before departure:

NMFS American Samoa Observer Program (684) 731-2478.

About availability of permit upgrades:

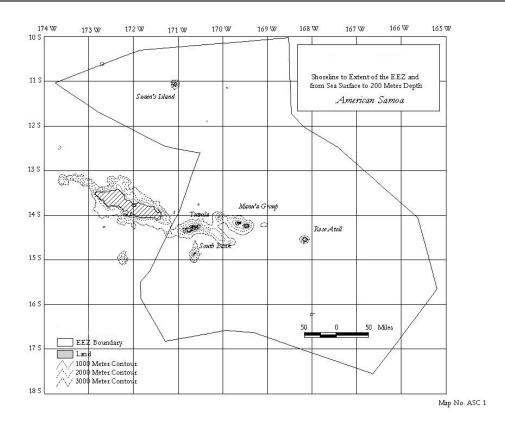
See the *Federal Register* notice of the availability of permit upgrades for 2006 (71 FR 42814)

For the regulations:

See the *Federal Register* notice of the final rule that is summarized in this guide (70 FR 29646, 24 May 2005).

See the *Code of Federal Regulations* (particularly Title 50, Part 665).

Map of the American Samoa EEZ



The solid line indicates the extent of the American Samoa EEZ. Map courtesy of the Western Pacific Fishery Management Council, with minor edits.

List of Pacific Pelagic Management Unit Species

Common name (Samoan name)	Scientific name		
Mahimahi (Masimasi)	Coryphaena spp.		
Indo-Pacific blue marlin (Sa'ula)	Makaira mazara		
Black marlin	M. indica		
Striped marlin	Tetrapturus audax		
Shortbill spearfish (Sa'ula)	T. angustirostris		
Swordfish (Sa'ula malie)	Xiphias gladius		
Sailfish (Sa'ula)	Istiophorus platypterus		
Pelagic thresher shark (Malie)	Alopias pelagicus		
Bigeye thresher shark	Alopias superciliosus		
Common thresher shark	Alopias vulpinus		
Silky shark	Carcharhinus falciformis		
Oceanic whitetip shark	C. longimanus		
Blue shark	Prionace glauca		
Shortfin mako shark	Isurus oxyrinchus		
Longfin mako shark	Isurus paucus		

Salmon shark Lamna ditropis
Albacore (Apakoa) Thunnus alalunga

Bigeye tuna (Asiasi , To'uo) T. obesus Yellowfin tuna (Asiasi , To'uo) T. albacore Northern bluefin tuna T. thynnus

Skipjack tuna (Atu, Faolua, Ga'oga) Katsuwonus pelamis Kawakawa (Atualo, Kavalau) Euthynnus affinis

Wahoo (Paala) Acanthocybium solandri

Moonfish (Koko)Lampris spp.Oilfish family (Palu talatala)GempylidaePomfret (Manifi moana)family Bramidae

Other tuna relatives Auxis spp., Scomber spp., Allothunus spp.